IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WA.No. 2534 of 2007

AGAINST THE JUDGEMENT IN WPC.15773/2007 Dated 10/07/2007

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APPELLANTS:

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1. V.MOHANDAS MENON,
   C.M.C.-4,
   KANAKALAYAM,
   CHERTHALA.

2. M.JAYSANKAR,
   JAYAKEERTHI, CMC4,
   PULIYANNOOR MADOM,
   CHERTHALA.

BY ADV. SRI.G.SUKUMARA MENON
SMT.DEEPTHI S.MENON

RESPONDENTS:

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1. THE CHERTHALA MUNICIPAL COUNCIL,
   REPRESENTED BY ITS CHAIRMAN.

2. CHERTHALA MUNICIPALITY,
   REPRESENTED BY THE MUNICIPAL SECRETARY,
   CHERTHALA.

BY ADV.SRI.J.OMPRAKASH.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2534 of 2007

Dated this the 31st day of October, 2007.

J U D G M E N T

Sankaran,J.

Admit. By the consent of learned counsel appearing for the parties to the lis, the matter is taken up for final hearing.

(2). The appellant filed W.P.(C) No.15773 of 2007, challenging Ext.P7 order passed by the Cherthala Municipality rejecting the revised plan submitted by the petitioner.

(3). The petitioner approached the Municipality for approving the plan submitted by him for construction of building. That was granted. Later, revised plan was submitted. That was also granted. Again, he submitted another plan with additional rooms and floors. The Municipality did not grant that plan. Nevertheless, the petitioner started construction on the ground that after 30 days he could commence the construction. It was not fully correct. Even after the Municipality did not dispose of the application within 30 days, the petitioner could only file appeal to the Municipal Council. Even after the Municipal Council did not dispose of the application within 30 days, the petitioner could construct the building.

(4). The petitioner has shown access to the building through a pathway, which according to the petitioner is a pathway over which the public has a right of way. As per Ext.P5 memo dated 10-2-2005, the Secretary of the

Municipality informed the petitioner that the revised plan cannot be approved. Challenging Ext.P5, the petitioner had approached the Tribunal for Local Self Government. The Tribunal passed Ext.P6 order dated 17th May, 2005, setting aside Ext.P5 order dated 10-2-2005 passed by the Municipality and the Municipality was directed to take a fresh decision in the matter. However, the Tribunal observed in para 10 of the order thus:

> *"I am of the view that I am failing in my duty if the way in which Exts.P3 and P4 permits for the construction of a building in the property comprised of Survey No.248/15 of Cherthala North Village belonging to the Ist Appellant which is not having direct road access were issued is not brought to the notice of the Government for appropriate action. The Ist Appellant submitted an application for the construction of a building having three shop rooms in the above said property and the access shown to the building was through the adjacent property belonging to the Respondent Municipality which was acquired for the construction of a Municipal Town Hall. That being the access shown in the plan submitted along with the application the Secretary has placed the application before the Municipal Council and the Municipal Council by a resolution dated 16-2-2004 accorded sanction for the issuance of building permit though the access shown was through the property belonging to the Municipality. I am doubtful as to the authority of the*

Municipal Council to grant permission for the issuance of a building permit for the construction of a building showing the property belonging to the Municipality as access. On 16-2-2004 itself the Secretary of the Municipality issued building permit based on the decision of the Municipal Council and Ext.P3 is a copy of that building permit. On 12-4-2004 the Ist appellant submitted another application along with a revised plan for the construction of a multi stored building having six rooms each in the ground floor and Ist floor and the access shown to the building was the adjacent property belonging to the Municipality. The Secretary of the Respondent Municipality rejected that application on 27-4-2004 stating so many defects. However, the Ist Appellant resubmitted the application on 3-5-2004 and building permit as sought for as per the application dated 12-4-2004 showing the adjacent municipal property as access was issued on 6-5-2005 and Ext.P4 is a copy of that permit. There is nothing on record to show that while issuing Ext.P4 permit the Secretary of the Municipality has obtained consent from the Municipal Council for using the adjacent municipal property as access to the building. I am doubtful about the authority of the Secretary of the Municipality to grant permission for the construction of a shop building as per Ext.P4 permit for which the municipal property is shown as the access. I am sure that the Government will look into the matter and take appropriate action against the officials concerned who had conspired for the issuance of a building permit for the construction of a shop

building showing the property of the Municipality that too acquired under the provisions of the Land Acquisition Act for the construction of a Municipal Town Hall as the access to that building. "

(5). Accordingly, the matter was referred to the Government. The Municipality passed Ext.P7 order dated 4-7-2005 rejecting the revised plan. The petitioner approached this Court, by way of writ petition, challenging Ext.P7 order passed by the Municipality, based on Ext.P6 order passed by the Tribunal for Local Self Government. The learned Single Judge held that since the Government is in seisin of the matter, no order could be passed on the merits and the claim of the petitioner could not be considered on merits.

(6). Learned counsel for the appellant points out that Ext.P8 letter dated 21-5-2005 issued by the Secretary to the Local Self Government to the Secretary of Cherthala Municipality directing the Municipality to consider whether the pathway belongs to the Municipality and then to consider whether permission could be granted to construct the building was not considered by the learned Single Judge. As per Ext.P8, the Secretary of the Municipality was directed to ascertain the ownership of the pathway shown as the access to the building and to consider the application for granting permit. As per Ext.P8, the matter is now before the Municipality, no matter whether the Government issued the direction as per reference made

to it by the Tribunal for Local Self Government or not.

(7). Since the matter is now pending before the Municipality for taking proper decision in the matter, we are of the view that, the writ appeal can be disposed of, by issuing a direction to consider the whole issue with reference to the facts and circumstances of the case and after making such local inspection and after affording an opportunity of being heard to the appellant/petitioner. The Municipality shall dispose of the matter within a period of two months from the date of receipt of a copy of this judgment, uninfluenced by any of the observations made by the learned Single Judge.

(8). In view of the order passed in the writ appeal, I.A.No.883 of 2007 is closed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS